

PROPOSED AMENDMENTS TO IMPACT FEE ORDINANCE

AN ORDINANCE amending Chapter 27.82 of the Lincoln Municipal Code relating to impact fees by amending Section 27.82.040 to revise the definition of ~~Low-Income~~ **“Low-to-Moderate-Income Owner-Occupied Housing,” to delete the definitions of “Income Area, Low” and “Income Area, Moderate,” to add a new definition for “Low-to-Moderate-Income Area”, and to clarify the definition of “Low-Income Rental Housing”**; amending Section 27.82.060 to add eligibility criteria for ~~Low-Income~~ **Low-to-Moderate-Income** Owner-Occupied Housing exemptions from Impact Fees and modifying the provisions regarding when a request for exemption must be made; amending Section 27.82.080 to modify the provisions regarding approval of **Low-to-Moderate-Income** Owner-Occupied ~~Low-Income~~ Housing exemption and reimbursement of impact fees paid; and repealing Sections 27.82.040, 27.82.060, and 27.82.080 of the Lincoln Municipal Code as hitherto existing.

BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

Section 1. That Section 27.82.040 of the Lincoln Municipal Code be amended to read as follows:

27.82.040 Definitions.

Unless the context specifically indicates otherwise, the meaning of terms used in this chapter shall be as follows:

Building permit. The City permit required to erect, construct, enlarge, alter, repair, remove, convert, or demolish any building, structure, swimming pool, or parking lot pursuant to the Lincoln Building Code.

Connection. The physical tie-in of a private water or wastewater service or system to the City's public water or wastewater system.

Cost of construction. All design costs, construction costs, engineering fees, testing expenses, inspection fees, and related miscellaneous costs.

Developer. Any person or legal entity undertaking development.

Development. Any construction expansion or conversion of a building, structure or use which creates additional demand for Impact Fee Facilities, any change in use of a building or structure which creates additional demand for Impact Fee Facilities, or any change in the use of land, which creates additional demand for Impact Fee Facilities, or any connection to the

1 City's public water or wastewater system which creates additional demand for Impact Fee
2 Facilities.

3 **Downtown/Antelope Valley Exclusion Area.** The area established and shown on
4 the Downtown/Antelope Valley Exclusion Area Map.

5 **Duplex.** Shall have the same meaning as two-family dwelling, as defined in section
6 27.03.200.

7 **Encumber.** To legally obligate by contract or otherwise commit to use by appropriation
8 or other official act of the City.

9 **Fee payor.** That person or entity who pays an impact fee.

10 **Gross Floor Area.** The floor area within the inside perimeter of the exterior walls of the
11 building under consideration, exclusive of vent shafts and courts, without deduction for corridors,
12 stairways, closets, the thickness of interior walls, columns or other features. The floor area of
13 a building, or portion thereof, not provided with surrounding exterior walls shall be the usable
14 area under the horizontal projection of the roof or floor above. The gross floor area shall not
15 include shafts with no openings or interior courts.

16 **Impact Fee Administrator.** The person or persons designated by the City to be
17 responsible for administering this ordinance.

18 **Impact Fee Facility.** One or more elements of the City's water and wastewater
19 systems, arterial streets, and neighborhood parks and trails included in the calculations of the
20 impact fees in the Impact Fee Study.

21 **Impact Fee Facility Improvement.** Planning, engineering design, construction
22 inspection, on-site construction, off-site construction, equipment purchases, and financing costs
23 including the issuance of bonds or other obligations of indebtedness associated with new or
24 expanded facilities, buildings, and equipment that expand the capacity of an Impact Fee Facility
25 and that have an average useful life of at least fifteen (15) years, but not including maintenance,
26 operations, or improvements that do not expand capacity. An Impact Fee Facility Improvement
27 shall also include land acquisition for water storage reservoirs, water pumping stations,
28 wastewater trunk lines, and neighborhood parks.

29 ~~**Income Area, Low.** An area where 50% or more of the households within a census~~
30 ~~block make 60% or less of the median gross income adjusted for household size.~~

~~**Income Area, Moderate.** An area where 50% or more of the households within a census block make 80% or less of the median gross income adjusted for household size.~~

Lincoln Impact Fee Study or Impact Fee Study. The Lincoln Impact Fee Study prepared by Duncan Associates dated October 2002.

Low-to-Moderate-Income Area. An area determined by the United States Department of Housing and Urban Development (HUD) to be a low-to-moderate-income area based upon census data.

~~**Low-Income**~~**Low-to-Moderate-Income Owner-Occupied Housing.** An owner-occupied unit, under local, state, or federal regulations, which is sold to or built by a household whose adjusted gross income is 80% or less of the area median gross taxable income adjusted for household size.

Low Income Rental Housing. A tenant-occupied unit which is rented to a household whose adjusted gross income is 80% or less of the area median gross income adjusted for household size and which is rent restricted under local, state or federal regulations, to households whose adjusted gross income is 80% or less of the area median gross income adjusted for household size, and which restrictions through means of a land use restriction agreement or similar legal document runs with the property for an initial period of at least fifteen years.

Mobile home. Shall be defined as in Section 27.03.430.

Mobile home court. The use of land for sites for mobile homes not located on individual platted lots.

Multi-family. Shall have the same meaning as multiple dwelling, as defined in Section 27.03.210, except that it excludes townhouses.

Neighborhood Park and Trail Impact Fee Exclusion Area. The area established and shown on the Neighborhood Park and Trail Impact Fee Benefit Areas Map as the Existing Neighborhood Park and Trail Impact Fee Exclusion Area.

Person shall include a natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or the manager, lessee, agent, servant, officer, or employee of any of them.

1 **Present Value.** The current value of past, present, or future payments, contributions
2 or dedications of goods, materials, construction or money, taking into account when appropriate
3 depreciation and inflation.

4 **Qualified Professional.** A professional engineer, surveyor, financial analyst or planner
5 providing services within the scope of his license, education, or experience.

6 **Single-family detached.** A single-family dwelling, as defined in Section 27.03.190, that
7 is not attached to any other dwelling by any means and that is the only dwelling unit on the lot.
8 This term shall include a mobile home located on a separately platted lot.

9 **Site-related improvements.** All site specific improvements primarily planned,
10 designed, or built to provide necessary access and service to the proposed development,
11 including all site driveways and local and collector streets leading only to the proposed
12 development; all traffic control devices that primarily give access to the development;
13 acceleration/deceleration lanes and left-turn and right-turn lanes to allow turning movements
14 into or out of the development from site driveways and local and collector streets.

15 **Tap.** The act of connecting to a public water main or public wastewater collector.

16 **Tap fee.** The permit fee required pursuant to Lincoln Municipal Code Section 17.10.040
17 to cover the City's cost in making the tap and of furnishing the required supply connection, water
18 meter with meter stops, and meter couplings, and other required meter apparatus.

19 **Townhouse.** Shall have the same meaning as townhouse, as defined in Section
20 27.03.630.

21 Section 2. That Section 27.82.060 of the Lincoln Municipal Code be amended
22 to read as follows:

23 **27.82.060 Exemptions From Impact Fees.**

24 (a) Exemptions From All Impact Fees. The following types of development shall be
25 exempted from payment of all impact fees otherwise due pursuant to this ordinance:

26 (1) Replacement of a destroyed or partially destroyed residential building or
27 structure with a new building or structure of the same use, and with the same number of
28 residential units, provided that the rebuilding or replacement occurs no later than fifteen years
29 after the demolition or removal of the previous structure.

(2) Replacement of a destroyed or partially destroyed nonresidential building or structure with a new building or structure of the same gross floor area and use, provided that the rebuilding or replacement occurs no later than fifteen years after the demolition or removal of the previous structure.

(3) Installation or replacement of a mobile home on a lot or site where all impact fees for such lot or site have previously been paid pursuant to this ordinance or where a mobile home legally existed on such lot or site on or prior to June 2, 2003.

(4) Room additions, remodeling, rehabilitation or other improvements to an existing structure, provided that there is no increase in the number of dwelling units for residential use or in the amount of gross square footage for nonresidential use.

(5) Construction pursuant to a building permit based upon a complete application filed with the City prior to June 2, 2003, provided the construction proceeds according to the terms of the building permit. If said building permit application expires, application for a new building permit shall be treated the same as a new development. A building permit application shall not be deemed to be complete until the application, together with all required attachments, information, or other accompanying documents, are filed with the City.

(6) ~~Low~~Low-to-Moderate Income Owner-Occupied Housing; provided that:

(i) The housing unit has an initial purchase price that does not exceed the FHA mortgage limit for the Lincoln Area as determined by the United States Department of Housing and Urban Development (HUD);

(ii) The housing unit is the principal residence of an owner whose household has an adjusted gross income which is 80% or less of the area median taxable income adjusted for household size; and

(iii) Neither the owner nor any member of the owner's household whose combined adjusted gross income is 80% or less of the area median taxable income adjusted for household size has purchased housing which qualified for a Low-Income Owner-Occupied Housing exemption within the immediately preceding five years.

(i) An Owner-Occupied unit which is sold to a household whose adjusted gross income is 60% or less of the area median ~~gross~~ income adjusted for a household size shall be entitled to a 100% exemption from all Impact Fees.

(ii) An Owner-Occupied unit which is sold to a household whose adjusted gross income is more than 60% but is 80% or less of the area median ~~gross~~ income adjusted for a household size shall be entitled to a 50% exemption from all Impact Fees.

(7) Low Income Rental Housing located outside of a low or moderate income area.

(i) A Tenant-Occupied unit which is restricted to rental to a household whose adjusted gross income is 60% or less of the area ~~medium-gross~~ median income adjusted for household size shall be entitled to a 100% exemption from all Impact Fees.

(ii) A Tenant-Occupied unit which is restricted to rental to a household whose adjusted gross income is 80% or less of the area ~~medium-gross~~ median income adjusted for a household size shall be entitled to a 50% exemption from all Impact Fees.

(8) Development or construction by any governmental entity for which the governmental entity has the statutory power of eminent domain shall not pay any impact fees since these entities are exempt from local zoning.

(9) Development or construction by the Housing Authority of the City of Lincoln pursuant to the Nebraska Housing Agency Act.

(b) Exemptions From Specific Impact Fees. The following types of projects shall be exempted from the following types of impact fees:

(1) Development, pursuant to a written agreement or other approval between the City and a developer which was entered into prior to June 1, 2002, and which specifically included or required the participation by the developer in the financing or construction of the Impact Fee Facilities for the approved development shall be exempt from the impact fee charged for those specific types of Impact Fee Facilities the developer agreed to finance or construct in whole or in part. The Impact Fee Administrator shall determine in writing whether or not any other agreement or other approval qualifies for an exemption. The Impact Fee

1 Administrator shall maintain a record of the agreements or other approvals that qualify for
2 category exemptions. A copy of said record shall be filed in the Office of the City Clerk.

3 Notwithstanding the above, the exemption shall not apply to any
4 amendment, modification, or change to the approved development to allow a change of use, an
5 increase in meter size, an increase in the amount of gross square footage for nonresidential
6 use, or an increase in the number of dwelling units for residential use that increases the impact
7 on the Impact Fee Facility in question. In such case, the fee shall be based on the net increase
8 in the fee for the new use, meter size, gross square footage for nonresidential use or number
9 of dwelling units for residential use as compared to the previous use, meter size, gross square
10 footage for nonresidential use and number of dwelling units for residential use.

11 (2) Where the Bureau of Fire Prevention requires that a water meter be
12 increased in size above that required for the ordinary usage of a building or other facility for the
13 purposes of maintaining fireflow to internal lines, the water and wastewater fees for that building
14 or other facility shall be based on the meter size that would be required without regard to the
15 fireflow requirements.

16 (3) Any separate water meter connected only to an irrigation system and not
17 to any building or other facility designed for human occupancy shall not be included in the
18 calculation of the wastewater impact fee.

19 (4) Other types of development shall be exempted from payment of specific
20 impact fees otherwise due pursuant to this ordinance if the person applying for a permit for such
21 development or the person seeking to engage in such development for which no permit is
22 required can demonstrate that the proposed land use and development will produce no
23 additional demand for a specific Impact Fee Facility beyond what was generated from such site
24 prior to the proposed development, using an average cost (not marginal cost) methodology.
25 The fact that a proposed development has direct access to, or is located close to, an existing
26 facility of the type covered by an impact fee, shall not by itself be evidence that the proposed
27 development will have no impact on the need for Impact Fee Facilities of the type covered by
28 the impact fee.

1 (c) Request for Exemption Required. If a permit is required for the proposed
2 development, any such claim for exemption must be made no later than the date of the
3 application for the permit for the proposed development except that a claim of exemption for
4 ~~Low-Income~~Low-to-Moderate-Income Owner-Occupied Housing must be made no later than
5 ~~60 ten~~ days following the date the housing is first occupied execution of the purchase contract.
6 If the issuance of a permit is not required for the development, then any such claim for
7 exemption must be made no later than the occurrence of any one of the following events,
8 whichever occurs first:

- 9 (1) Completion of any connection to the City's water and wastewater systems;
10 or
11 (2) The date when any part of the development opens for business or goes
12 into use.

13 Any claim for exemption not made at or before that time provided above shall be
14 deemed waived.

15 (d) Determination of Validity. The Impact Fee Administrator shall determine the
16 validity of any claim for exemption pursuant to the criteria set forth in this ordinance.

17 (e) Funding of Exemptions. The proportionate share of any Impact Fee Facility or
18 Impact Fee Facility Improvement cost directly related to the exemptions granted pursuant to
19 Subsection (a)(6), (7), and (8) above shall be funded from a revenue source other than impact
20 fees.

21 Section 3. That Section 27.82.080 of the Lincoln Municipal Code be amended
22 to read as follows:

23 **27.82.080 Refunds of Impact Fees Paid.**

24 (a) Passage of Time. Any monies in any impact fee account that have not been
25 spent or encumbered within eight years after the date on which such fee was paid shall, upon
26 application to the Impact Fee Administrator by the fee payor, be returned to such person with
27 interest since the date of payment at the rate earned by the City on the fees. Fees shall be
28 deemed to be spent on the basis that the first fee collected shall be the first fee spent. Within
29 six months of the end of the eight-year period from the date on which the unspent impact fee

1 was paid, the Impact Fee Administrator shall notify the fee payor of eligibility for a refund at the
2 address listed with the Impact Fee Administrator. In order to receive such refund, the fee payor
3 shall be required to submit an application for such refund within twelve months after the
4 expiration of such eight-year period. Any monies in an impact fee account for which no
5 application for a refund has been timely made shall be retained by the City and expended on
6 the type of Impact Fee Facilities reflected in the title of the account without further limitation as
7 to time of expenditure.

8 (b) Expiration of Permit. If a person has paid an impact fee required by this
9 ordinance and has obtained a building permit or any other permit for a development or
10 extensions thereto, and the permit or extension for which the fee was paid later expires without
11 the possibility of further extension, and the development activity for which the impact fee was
12 imposed did not occur and no impact has resulted, then such fee payor shall be entitled to a
13 refund of the fee paid, with interest. In order to be eligible to receive such refund, such fee
14 payor shall be required to submit an application for such refund within six months after the
15 expiration of the permit or extension for which the fee was paid.

16 (c) Approval of ~~Owner~~ Low-to-Moderate-Income Owner- Occupied ~~Low-Income~~
17 Housing Exemption. If, after an impact fee has been paid pursuant to this ordinance for a
18 development which subsequently qualifies for ~~an Owner-Occupied~~ a Low-to-Moderate-
19 Income Owner-Occupied ~~Low-Income~~ Housing Exemption pursuant to Section
20 27.82.060(a)(6), then such ~~fee payor~~ purchaser shall be entitled to a reimbursement of the fee
21 paid, without interest. In order to be eligible to receive such reimbursement, such ~~fee payor~~
22 purchaser shall be required to submit an application for such exemption and reimbursement no
23 later than ~~60 ten~~ days following the ~~date such housing is first occupied~~ execution of the
24 purchase contract.

25 (d) No Refund for Altered Development. After an impact fee has been paid pursuant
26 to this ordinance, no refund of any part of such fee shall be made if the development for which
27 the fee was paid is later demolished, destroyed, or is altered, reconstructed, or reconfigured so
28 as to reduce the size of the development, the number of units in the development, or the amount
29 of traffic generated by the development. +

1 (e) Notice to Fee Payor. At the time of payment of any impact fee under this
2 ordinance, the Impact Fee Administrator shall provide the person paying such fee with written
3 notice of those circumstances under which refunds of such fees will be made. Failure to deliver
4 such written notice shall not invalidate any collection of any impact fee under this ordinance.

5 Section 4. That Sections 27.82.040, 27.82.060, and 27.82.080 of the Lincoln
6 Municipal Code as hitherto existing be and the same are hereby repealed.

7 Section 5. That this ordinance shall take effect and be in force from and after its
8 passage and publication according to law.